

**RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
DIVISION OF COMMUNITY AND FIELD SERVICES**

**CHAPTER 1240-7-10
ADULT DAY CARE SERVICES STANDARDS**

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1240-7-10-.01 PURPOSE OF LICENSURE.

- (1) The primary purposes of licensure are the protection of adults who are participants in adult day care centers and the provision of day services designed to maintain or restore each adult's optimal capacity for self-care through medical or social services.
- (2) The following standards seek to maintain adequate health, safety and supervision of adults while in adult day care services to the end that they may achieve these goals.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.02 LEGAL BASIS FOR LICENSURE. Tennessee law requires that adult day care centers as defined in TCA §§71-2-401 et seq. be licensed. If any center subject to these requirements currently is licensed by another agency of state government, after consultation with that agency, the Commissioner may determine that the provisions of the other licensing body adequately regulate the center's program and the Commissioner may determine that licensing of the entity is unnecessary.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.03 DEFINITIONS. For purposes of this Chapter, the following definitions are applicable:

- (1) "Adult" shall mean an individual who is eighteen (18) years of age or older.
- (2) "Adult day care center" shall mean a facility which provides adult day care services.
- (3) "Adult day care services" shall mean services provided to ten (10) or more adult recipients, for more than three (3) hours per day but less than twenty-four (24) hours per day, by a provider of such services who is not related to such adult, pursuant to an individualized plan of care designed to maintain or restore each adult's optimal capacity for self-care through medical or social services.
- (4) "Affidavit" shall mean the notarized statement filed by the facility certifying that such facility is in existence and in operation as of January 1, 1997.

(Rule 1240-7-10-.03, continued)

- (5) "Annual license" shall mean an annual certificate issued by the Department to an adult day care center, authorizing the licensee to provide adult day care services in accordance with the provision of the license, the law, and the requirements of the Department.
- (6) "Assisted-care living facility" shall mean a building, establishment, complex or distinct part thereof which is defined as provided by *TCA §68-11-201* and licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* or as further defined by Chapter 1200-8-25.
- (7) "Biennial license" shall mean, with the Commissioner's approval, a certificate issued by the Department to an adult day care center at the end of the annual license period, authorizing the licensee to provide adult day care services for a twenty-four (24) month period. If a biennial license is granted, it may be limited to an annual license at the next renewal period.
- (8) "Commissioner" shall mean the Commissioner of the Tennessee Department of Human Services.
- (9) "Denial" shall mean the decision of the Department not to issue a provisional or regular annual or biennial license.
- (10) "Department" shall mean the Tennessee Department of Human Services and its representatives.
- (11) "Fee" shall mean a processing fee for license applications assessed by the Department and submitted by the agency with the application in accordance with the following schedule:
 - (a) Adult Day Care Center--Less than 50 \$15.00
 - (b) Adult Day Care Center--50-100 \$20.00
 - (c) Adult Day Care Center--More than 100 \$25.00
 - (d) If a biennial license is issued, the fees established by subparagraphs (a)-(c) shall be doubled.
 - (e) Any adult day care center which is operated by a public, nonprofit or local municipality operating under a grant from the Department and which pays an administrative fee as part of the monitoring requirements of such grant shall be exempt from the licensure fee.
- (12) "Full-time equivalency ("FTE") methodology" shall mean the use of one or more available staff on a part-time basis to meet required staff:participant ratios at the adult day care center so that the total number of hours devoted to providing care and supervision of the participants by the various staff equals the staff time necessary to meet the staff:participant ratios which would be provided if one, or more, staff were utilized on a full-time basis to provide appropriate care and supervision to the participants.
- (13) "Governing board" shall mean the group of persons having final authority and responsibility for conduct of the adult day care center serving ten (10) or more persons in those centers which are operated by a municipality, county or non-profit corporation. It shall have at least four (4) members. It may include members who may be recipients of the service of the adult day care center, relatives of such recipients, or representatives of community organizations with particular interest in programs for the elderly. No member of the governing board, nor any member of the immediate family of the governing board, shall have any direct or indirect interest in any contract for supplying services to the adult day care center.
- (14) "Home for the aged" means a home as defined in *TCA §68-11-201* and as licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* and Chapter 1200-8-11.

(Rule 1240-7-10-.03, continued)

- (15) "Hospital" shall mean any institution, place, building or agency as defined in *TCA §68-11-201* and as licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* and Chapter 1200-8-1.
- (16) "Hospice" shall mean any institution, place or agency as defined in *TCA §68-11-201* and as licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* and Chapter 1200-8-8.
- (17) "License" shall mean a certificate issued by the Commissioner authorizing the operator to provide adult day care services for a specified period of time. The term "new license" shall include any renewal of a license.
- (18) "Licensee" shall mean the organization, partnership, corporation, person(s) or other entities which operate an adult day care center pursuant to a license issued by the Department.
- (19) "Nursing home" shall mean an institution, place, building or agency as defined in *TCA §68-11-201* and as licensed by the board for licensing health care facilities pursuant to *TCA §68-11-209* and Chapter 1200-8-6.
- (20) "Participant" shall mean the adult receiving services in the adult day care center.
- (21) "Probation" shall mean the legal status of an adult day care center in which the Department has determined that there exist violations of statutory or regulatory standards concerning the operation of the center that require notice to the public of the existence of such violations and corrective action by the licensee, but which do not currently warrant suspension, denial or revocation of the center license. Failure to correct violations which caused the imposition of probation by the Department may lead to suspension, denial or revocation of the center's license.
- (22) "Provisional license" shall mean a certificate issued by the Department to an adult day care center, authorizing the licensee to provide adult day care services for a maximum of one (1) year while the center demonstrates that it substantially meets the requirements for licensing, that there are no health or safety violations under the licensing requirements, and that any violations are addressed by the center in a corrective action plan which is acceptable to the Department.
- (23) "Related" shall mean a person who is related to the adult day care services recipient as a legal or biological parent, a step-parent, spouse, child, grandchild of any degree, sibling, aunt, uncle, nephew or niece of any degree, or cousin to the third degree, or grandparent of any degree, or a step-grandparent of any degree.
- (24) "Respite care" shall mean to offer temporary, substitute living arrangements for dependent adults in order to provide a brief period of relief or rest (usually more than twenty-four (24) hours) for family members, conservators, guardians, or other people who are their regular caretakers.
- (25) "Responsible party" shall mean the relative, legal representative or other person who makes the placement of the participant with the adult day care center, to whom center staff will look for decisions regarding the participant's care and to whom information regarding the participant's care and status is reported by the center's staff. A participant who appears to the center's staff to be mentally capable of making his or her own decisions may act on his or her own behalf without having another person as responsible party.
- (26) "Revocation" shall refer to action taken by the Department to terminate an adult day care center's license when the center fails to comply with licensing regulations during the term of the existing license.

(Rule 1240-7-10-.03, continued)

- (27) "Senior citizens center" shall mean a not-for-profit or municipal agency, which serves persons fifty-five (55) years of age and older. The range of activities varies from center to center, however, most senior center agencies provide recreational and social activities, hot lunch meals, a protected environment where elderly persons can congregate, community services, employment opportunities, opportunities for volunteer services, and information, referral and consultation services. If properly licensed as an adult day care center, the senior citizens center may operate an adult day care program.
- (28) "Sheltered workshop" shall mean a program that provides a controlled and protected working environment and remunerative employment activities with individualized goals to help people who have disabilities progress toward normal living and productive vocational status. The objective of the program is to help participants achieve employment if the potential exists, or long-term employment within a sheltered workshop if competitive employment is not feasible.
- (29) "Sitter Service" shall mean the provision of basic care and supervision of adults for some period of time during a twenty-four (24) hour period, but less than twenty-four (24) hours per day, and the offering to those adults of any support or assistance if needed, but without a specific program for maintenance or restoration of the adult's capacity for self-care.
- (30) "Summary suspension order" shall mean an order issued by the Department to immediately suspend the license until action is taken by the licensee to correct the problem which imminently affects the health, safety, or welfare of the day care participants.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq., and 71-3-506(b). **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.04 LICENSING PROCEDURE.

- (1) All facilities which meet the definition of an adult day care center as defined in these rules shall be licensed by the Department of Human Services except as otherwise provided in 1240-7-10-.02. An adult day care center as defined in these rules which is operating without the requisite license and which is not otherwise exempted from licensing by the Commissioner as provided by this paragraph or by 1240-7-10-.02, shall be subject to closure by injunctive relief pursuant to TCA §29-3-112.
- (2) All applicants for a license to operate an adult day care center shall file an application for a license on a form approved by the Department and shall submit with the application the required fee as set forth in 1240-7-10-.03(11). Any adult day care center which is operated by a public, non-profit agency or local municipality operating under a grant from the Department and which pays an administrative fee as part of the monitoring requirements of such grant shall be exempt from the licensing fee.
- (3) The application for the provisional, or for an annual or biennial license, shall include the following information:
 - (a) Evidence satisfactory to the Department that the applicant, the person designated to manage the day to day operations of the proposed adult day care center, and its directors and officers if the applicant is a non-profit corporation, are of reputable and responsible character, and that the legal and administrative responsibility for the day to day operation of the center is clearly defined;
 - (b) Evidence satisfactory to the Department of the ability of the applicant to comply with the adult day care center law and these regulations;
 - (c) A list of the governing board, its officers and directors, if the facility is to be operated by a municipality, county or a non-profit corporation;

(Rule 1240-7-10-.04, continued)

- (d) Evidence satisfactory to the Department that no member of the governing board nor any member of the immediate family of the board members have a direct or indirect interest in any contract for supplying services to the adult day care center;
 - (e) Evidence that no part of the net earnings of a facility operated by a municipality, county or a non-profit corporation will benefit a private shareholder or individual;
 - (f) Evidence of the capability, training and experience of the director or person in charge of the proposed adult day care center as required by 1240-7-10-.10(4);
 - (g) Evidence of a criminal background check as required by 1240-7-10-.10(2)(a)2. of all staff or designated volunteers who are included in the staff to participant ratio. Prior to issuing a new license, the Department shall determine that each adult day care center has written documentation of a criminal background check on all employees and any volunteers who are included in the staff to participant ratio. A past conviction of crimes committed by the employees or volunteers of the adult day center involving: misuse of funds, fraud, physical abuse or assault of any degree, or any degree of homicide against any person, the illegal use or illegal possession or distribution of drugs or alcohol shall, in the discretion of the Department, be grounds for denial of a license; and
 - (h) Evidence of a planned program which protects the safety of the participants;
- (4) When an application for any license, and when the necessary fire, safety, environmental and food service establishment approvals, have been received, the Department shall conduct an initial inspection, and any further inspections necessary to make a determination regarding the issuance of the license.
- (5) Provisional License.
- (a) If the application is for a facility which is not currently licensed by the Department, the Department shall only issue a provisional license. The provisional license shall be issued to the proposed adult day care center only if the Department determines that:
 - 1. The proposed center substantially complies with the adult day care law and these regulations, including specifically those in paragraph (3);
 - 2. No violation of the adult day care law or these regulations exists which jeopardizes the health or safety of the adults being served in the facility; and
 - 3. The applicant has adopted a plan satisfactory to the Department for the correction of any existing violations of any regulations.
 - (b) The provisional license shall be valid for a maximum period of one (1) year, but may be for a shorter period as determined by the Department.
 - (c) The holder of a provisional license must submit an application for a regular annual license at least thirty (30) days prior to expiration of the provisional license which must be accompanied by the appropriate fee. If the provisional license was granted for a period of less than one (1) year, the Department will give the applicant credit for the annual license fee up to the amount of fee remaining from the provisional license application.
 - (d) Within thirty (30) days prior to termination of the provisional license, the Department shall conduct a full and complete inspection of the adult day care center, and;

(Rule 1240-7-10-.04, continued)

1. If the adult day care center meets all applicable requirements for licensure, a regular annual license shall be issued; or
 2. If the inspection demonstrates that substantial progress is being made in meeting the regulations applicable to the operation of an adult day care center prior to the expiration of the provisional license, the Department may extend the provisional license for a period not to exceed six (6) months. No additional fee shall be charged for the extension of a provisional license.
- (e) If there has not been substantial progress in meeting the regulations for the operation of the adult day care center at the time of the inspection, or, if the Department determines upon an inspection made within thirty (30) days prior to the expirations of the six (6) month extension of a provisional license that full compliance with the standards for operation of an adult day care center have not been demonstrated by the applicant, no extension of the provisional license, and no regular annual license, shall be issued.
- (6) No applicant which is licensed as a health facility, community care facility or clinic may be issued a license for an adult day care center while there exists a substantial uncorrected violation of the statutes or regulations relating to such license. The applicant will be held responsible for notifying the Department of Human Services of any such existing violations of regulations governing its licensure for those other facilities. Failure to provide such notification shall be grounds for revocation of the adult day care center's license.
- (7) Any license issued or renewed pursuant to these rules shall not be transferable to any other person or entity, and the sale or transfer of the adult day care facility by any means from the person or entity named as the licensee to any other person or entity shall require an application by the transferee for a provisional license and shall require the payment of the appropriate fee as set forth in 1240-7-10-.03(11). The adult day care center, the ownership or control of which has been transferred by the existing licensee, shall not continue operation until a provisional license has been granted to the transferee.
- (8) Annual and biennial licenses.
- (a) The regular annual license shall expire twelve (12) months from the date of issuance; however, the Commissioner may approve applications for re-licensing of a regular annual licensee as a biennial licensee. If a biennial license is granted, the Commissioner may limit the biennial license to an annual license at the next renewal period.
- (b) An application for an annual or biennial license shall be accompanied by the appropriate fee as set forth in 1240-7-10-.03(11) together with evidence of the appropriate inspections required by paragraph (4), and these must be received by the Department at least thirty (30) days prior to the expiration of the existing license if the licensee is a current licensee. Except as provided in 1240-7-10-.15(6) or (7), failure to submit the renewal application with the appropriate fee in a timely manner for either an annual license or a biennial license, or for a regular annual license after a provisional license has been issued, shall result in expiration of the license. A new application for an initial license must then be made in accordance with these rules.
- (9) The license shall be posted in a conspicuous place where it can be readily seen by persons entering the center.
- (10) The Department shall have the right of inspection at all times, and upon proper identification may enter and inspect any licensed or suspected adult day care center at any time, with or without advance notice for the purpose of conducting its licensing responsibilities. Access shall be provided to law enforcement or adult protective services staff of the Department for interviews of staff, volunteers or

(Rule 1240-7-10-.04, continued)

participants involving the investigation of any allegations of abuse, neglect or exploitation of any adult. If refused entrance for inspection of licensed or suspected adult day care center, the Department may seek an immediate ex parte order from the chancery or circuit court of the county where the licensed or suspected adult day care center may be located upon a showing of probable cause that the facility is a licensed or suspected adult day care center and that the Department has been refused entrance to conduct an inspection. The court may direct any law enforcement officer to aid the Department in executing such order and inspection. Refusal to obey such order may be punished as contempt.

Authority: T.C.A. §§4-5-201 et seq.; 29-3-112; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.05 ADMINISTRATION.

- (1) **Governing Board:** If an adult day care center is operated by a municipality, county, or non-profit corporation, the governing board shall have final authority and responsibility for the conduct of the adult day care center and shall conform to the requirements of 1240-7-10-.03(13).
- (2) **Oversight:** The governing board and administration or the entity or individual applying for a license in the case of a for-profit operation are responsible for oversight of each center's operation. This oversight includes:
 - (a) Providing services described in the standards established by the Department.
 - (b) Establishing relationships with local health and social service providers for the purposes of consultation and/or referral.
 - (c) Ensuring adequate financing for the center's operation is maintained. Governing board minutes must show evidence of financial review and be available to the licensing staff upon request.
 - (d) Establishing an evaluation system which considers the needs of participants, their caregivers, and effectively identifies and resolves problems.
- (3) **Operating Procedures:** The governing board and administration or the entity or individuals applying for a license in the case of a for-profit operation must establish written policies concerning: admissions; discharges; fees; hours of operation; personnel policies; plans for emergencies and disasters; and other policies as necessary. These policies shall be reviewed and revised in writing as necessary.
- (4) **Philosophy and Goals:** Each center must develop in writing its philosophy and goals. A center may focus on a target population delineated by age group, type of impairment, medical handicap or other criteria, but may not discriminate against any adult persons because of age or disability.
- (5) **Multiple-Use Facilities:** A multiple-use facility such as, but not limited to, a hospital, nursing home, home for the aged, assisted-care living facility, senior citizens center, church, or school in which an adult day care center is operated shall have a written agreement regarding the center's operation. The written agreement shall include such items as time allotted for use of the space for the adult day care center's operations, maintenance of such space, use of equipment, security, fiscal, and personnel services, and other shared services, and the multiple use facility shall comply with these regulations.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.06 PROGRAM.

- (1) Individuals who present a significant threat to themselves or others, or whose intellectual, emotional or behavioral level prevent them from benefiting from the center's plans of care are not appropriate for adult day care services.
- (2) Individuals who need only leisure time activities, respite care or sitter services and who do not require a structured program of organized activities which provides personal care, self enhancement, and personal growth and development are not appropriate for adult day care services.
- (3) Each facility shall provide supervision and personal care of the participants as needed.
- (4) Adult day care programs located in or affiliated with a licensed nursing home, a licensed hospital, a licensed assisted care living facility, licensed home for the aged, a licensed residential hospice, a senior citizens center, church, school or a sheltered workshop may utilize the resources of the facility/agency to act as support to the adult day care program. However, adult day care services are not intended to serve as a substitute for the services of skilled nursing care, a senior citizens center or a sheltered workshop. The adult day care program, regardless of its location or affiliation, must comply with the program content requirements as described in paragraph (5).
- (5) Adult Day Services Program Content.
 - (a) The adult day care services program shall consist of activities and therapies offered through individualized plans of care for each participating adult which set forth measurable goals or behaviorally-stated objectives.
 - (b) Activities and therapies shall be designed to activate, motivate, and/or retrain participants to maximize their functional capacity.
 - (c) Each day's activities shall include some physical exercise, rest, social interaction, learning opportunities, mental stimulation, and, if needed, personal care. These social, educational and life enrichment activities may include, but are not limited to, the following: arts, crafts, music, pet therapy, field trips, current events, history, games, puzzles, cards, physical activity, reminiscence sessions, movies, discussions about feelings, and appropriate recreational activities.
 - (d) Although leisure activities comprise an integral part of the adult day care program, activities which are limited to only the viewing of television or other media sources, or only to listening to the radio, records, or compact discs, or only to reading the newspaper, magazines, books, and other reading materials, do not constitute services sufficient for an adult day care program.
 - (e) Group and individual activities shall be provided. Participants shall be able to choose between group and individual activities during at least some part of the day. The participants shall have the choice of refusing to participate in any activity. Group size should be appropriate to the type of activity and functional capability of the participants.
 - (f) The program must include assistance from community referrals and resources when appropriate.
 - (g) An activity schedule shall be posted at all times.
- (6) An adult day care center may elect to provide occasional overnight, or week-end lodging for its participants, but the provision of this type of respite service shall not be subject to regulation pursuant to this Chapter.

(Rule 1240-7-10-.06, continued)

- (7) If a center markets itself as a specific Alzheimer's program, then it is subject to *TCA Title 68, Chapter 11, Part 14* relative to the disclosure of treatment for Alzheimer's disease.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.07 RECORDS.

- (1) Records of the staff, any volunteers, the participants and any other records required by these regulations shall be maintained by the center for at least three (3) years, and shall be made available to the Department's staff for review for any licensing or adult protective service duties.
- (2) A file shall be maintained for each participant. Each file shall contain, at a minimum, the following information regarding the participant:
 - (a) Name, address, age, and other identifying information;
 - (b) Primary caregiver;
 - (c) Emergency contact information for a responsible party and personal physician for the participant;
 - (d) Behaviors of the participant impacting on his/her care and treatment;
 - (e) Limitations in activities of daily living;
 - (f) Physical disabilities or conditions requiring specific modes of care, including allergies and diet;
 - (g) Additional information provided by the caregiver, family, responsible party or staff necessary for the provision of comprehensive individualized care;
 - (h) A listing of individuals or entities authorized to transport the participant;
 - (i) A copy of the durable power of attorney, if available;
 - (j) A copy of any existing and currently effective conservatorship documents involving the participant;
 - (k) A listing of prescription and non-prescription medication taken by the participant. This list must be updated at least every six (6) months or as medications are changed by the participant's physician;
- (3) Ongoing records, reflecting the participant's plan of care, shall be updated as indicated by the participant's change in status, but shall be updated not less than every three (3) months. These records shall contain the following information regarding the adult participant:
 - (a) Goals and Activities. An over-all goal, and activities supporting this goal, must be included in each participant's plan of care. The goal and activities must be clearly stated and specifically address the participant's needs. The needs in this plan of care shall include the personal, social, physical, mental, and where appropriate, educational needs of the participant. The goal, and accompanying activities, of this individualized plan of care must show how the participant's lifestyle will be either adequately maintained or improved during the participant's stay at the adult day care center.

(Rule 1240-7-10-.07, continued)

- (b) **Progress.** The plan of care must demonstrate how the specific activities are going to be implemented to meet the stated goal established for the participant. At the end of every three (3) month period (quarterly), a specific progress report must show how these activities have been specifically implemented and show what the specific outcome has been. If it is determined that the objectives have not been adequately met, then the plan of care, or the appropriate activities in the plan, shall be revised.
 - (c) **Mental and Physical Conditions.** The participant's mental and physical conditions must be thoroughly described upon intake into the adult day care center. The plan must include how these conditions will either be accommodated and/or enhanced by the daily activities carried out by the adult day care center. Persons with Alzheimer's disease or other dementia or disabling diseases must be provided some type of therapy/intervention or special service which is specific to treating or assisting the affected person to better cope with the disability. Persons must be provided the necessary assistance as may be required by the Americans with Disabilities Act.
 - (d) **Other changes or observations noted by program staff.** All other changes and observations must be noted by program staff. These changes may include, for example, a change in the participant's mood, behavior, diet, medications, or other personal circumstances. Any changes in the participant's original personal plan of care and statements explaining why the plan was altered shall be noted. Any new or additional services provided to the participant by the center shall be described, and an explanation in the record shall be noted describing how and why these new or additional services are providing improved care to the participant served by the center.
- (4) A record of incidents, accidents, injuries, illnesses and emergencies involving the participant shall be maintained in the participant's file and on a separate log and shall be reported to the participant's responsible party.
 - (5) An adult day care center located on the premises of and operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice may satisfy the requirements for recordkeeping in these rules by use of existing recordkeeping processes which capture the same information and which maintain the records of the participants in the adult day care program as separate, identifiable records related to the adult day care participant's activities in the adult day care center as previously described in this section.
 - (6) An adult day care center using the full time equivalency (FTE) methodology for meeting the staff:participant ratios required by 1240-7-10-.10 shall maintain adequate records to document the time provided by staff used to fulfill the FTE requirement.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.08 PHYSICAL PLANT.

- (1) **Plans.** New construction, major renovations and/or additions to existing facilities must be constructed and maintained according to the standards of the Fire Prevention Division of the Tennessee Department of Commerce and Insurance and of the Division of General and Environmental Health of the Tennessee Department of Health.
- (2) The center shall have space on the ground level floor or be accessible by elevator or wheelchair ramps or other assistance devices to accommodate a full range of program activities and services, which shall include, but are not limited to:
 - (a) Space for individual and group activities;

(Rule 1240-7-10-.08, continued)

- (b) Private office space to permit staff to work effectively;
 - (c) Storage space for program and operating supplies; and
 - (d) Space for special therapies, a rest area, and a designated area to isolate the ill which includes comfortable resting furniture that would allow participants to recline or lie down. This may be in one room or in more than one room.
- (3) At least forty (40) square feet of indoor activity space per participant shall be provided. Floor space for bathrooms, storage areas, and rooms designated only for staff use shall be excluded when computing the minimum activity space. Adult day care centers located on the premises of, on the grounds of, or adjacent to, other operations such as licensed nursing homes, licensed hospitals, licensed assisted-care living facilities, licensed residential homes for the aged, or licensed residential hospices may utilize, on a staggered or shared basis, the same facilities such as dining rooms, recreation rooms, or physical therapy rooms as are used by the clients of those other operations, provided that overcrowding does not occur; and, provided further that the space in these other facilities shall not count toward the space requirements necessary for the conduct of the adult day care center.
- (4) Sufficient and appropriate seating space for all participants shall be provided.
- (5) Sufficient table or tray space for dining and activities shall be provided.
- (6) The center shall be kept clean, safe and free from hazards and offensive odors.
- (7) The following equipment must be kept on site:
 - (a) A first aid kit that contains at least the following: sterile bandages and adhesive band-aids, antiseptics, sterile compresses, scissors, an oral or topical thermometer and adhesive tape;
 - (b) Scale;
 - (c) Blood pressure cuff;
 - (d) Blanket;
 - (e) Wheelchair; and
 - (f) Locked storage space for drugs.
 - 1. If medicine requiring refrigeration is kept in a refrigerator used for food storage, the medicine must be put in a leak proof locked container and be properly labeled.
 - 2. Keys for these storage compartments must be inaccessible to participants.
- (8) Toilet Facilities.
 - (a) For the first fifteen (15) participants in the adult day care center, there shall be a minimum of two (2) toilets in the adult day care center, one (1) of which shall be wheelchair accessible. For each group of ten (10) participants, or portion thereof, after fifteen (15) participants, there shall be an additional toilet. Fifty percent (50%) of the toilets in the adult day care center shall be wheelchair accessible.
 - (b) On the effective date of these rules, existing facilities meeting the definition of an adult day care center which have less than twenty-five (25) participants shall only be required to have one (1)

(Rule 1240-7-10-.08, continued)

wheelchair accessible toilet available to participants in the adult day care center; provided, however, the other requirements of subparagraph (a) shall apply, and provided, further, that if such adult day care center enrolls twenty-five (25) or more participants at any time after the effective date of the rules, or if the adult day care center adds additional space or if the center moves to another location, the center shall comply with all of the requirements of subparagraph (a).

- (9) The heating/cooling system shall operate adequately to assure the comfort and safety of the participants.
- (10) The center must have a working telephone.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.09 FOOD SERVICE.

- (1) Each facility will comply with the Tennessee Department of Health's Food Service Establishment laws at TCA §§68-14-301 et seq. and implementing regulations; provided, however, an adult day care center located on the premises of or operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice, shall be deemed to be in compliance with this section if food service is operated in compliance with the regulations governing those designated facilities. However, if food preparation at the adult day care center is not included in the facility's annual inspection by the Tennessee Department of Health's Division of Health Care Facilities survey team, then arrangements must be made for a separate initial and annual inspection by the local health department, and a permit under the Food Service Establishment Laws and Regulation must be obtained. The adult day care center director is responsible for supplying documentation of compliance.
- (2) The program shall offer one (1) or more meals if the participants do not provide their own meal.
- (3) Food preparation must be conducted in a safe and sanitary manner. Effective equipment shall be provided and procedures established to maintain food at proper temperature during preparation and service. Foods shall be prepared by appropriate methods to conserve their nutritive value and enhance their flavor and appearance.
- (4) Nutritional needs shall be met in accordance with the Adult Meal Pattern Requirements as recommended by the United States Department of Agriculture (USDA)'s Food and Nutrition Service Program and in accordance with each caregiver's instructions and physician's orders, if applicable.
- (5) Food shall be cut, chopped or ground to meet individual participant's needs. Participants requiring help in eating shall be assisted. Adaptive self-help devices shall be provided where required in such a manner as to contribute to the participant's independence in eating.
- (6) The center must post its weekly meals menu in a prominent place so that it may be seen by the participants and their responsible parties.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.10 STAFFING.**(1) Staffing Patterns.**

- (a) Staff of the center shall be adequate in number and skill to ensure the safety and proper supervision of the participants and to carry out the objectives of the center.
- (b) Direct care staff. The direct staff ratio shall consist of at least (1) direct care staff person for every eight (8) participants. "Direct care staff" are those individuals whose regular job responsibilities place them in face-to-face contact with participants.
- (c) Volunteers may be considered in determining direct care staff/participant ratios; provided that the volunteers' education and training meet the minimum requirements of staff positions being filled. Volunteers who do not meet these minimal requirements may not be counted in the required ratio, but may assist staff and other qualified volunteers. One (1) responsible paid direct care staff member must, however, be present at all times if volunteers are used. Volunteers who do not meet the minimum qualifications must always be supervised by a direct care staff member.
- (d) Use of full time equivalency positions.
 - 1. An adult day care center located on the premises of and operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice may use full time equivalency (FTE) ratios; provided, the total time of all staff used in the FTE methodology meets the staff:participant ratio required in subparagraph (b). Further, any adult day care center affiliated with a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice using full time equivalency ratios, must provide a written plan which is available to the Department demonstrating that the safety and emergency needs of the participants will be assured at all times if the FTE method is used.
 - 2. FTE policy: For activities, conducted inside the facility, which involve the participation of all participants, such as the viewing of movies, watching special presentations, or observing performances, it may not be necessary to have a 1:8 staff:participant ratio, and a lesser number of staff may be used. There can, however, never be less than two (2) direct care staff present when there are nine (9) or more participants. For activities outside the facility such as field trips, staff numbers exceeding the 1:8 staff ratio may need to be utilized as necessary to provide adequate supervision for the participants due to the physical or mental status of the participants.
- (e) At least one (1) direct staff member trained in cardiopulmonary resuscitation (CPR), first aid, fire safety, and the Heimlich maneuver shall be present at all times.

(2) Personnel Procedures

- (a) Individual staff records shall be maintained for all employees and any volunteers included in the staff of the adult day care center. These records will include the following:
 - 1. Name, telephone number, addresses, including all residence and work or volunteer service addresses of staff within the twelve (12) month period prior to hiring as an employee or acceptance as a volunteer or within twelve (12) months of the application for the center license for existing license applicants, and the age, race, and sex of staff or volunteers, which are necessary to aid in accurately performing the criminal record background check;

(Rule 1240-7-10-.10, continued)

2. Evidence of criminal background check.
 - (i) The criminal records background check shall be conducted for all previously undocumented employees or volunteers included in the staff:participant ratio prior to the issuance of the new license.
 - (ii) The background check shall be accomplished by contacting and requesting any information regarding the criminal background of such employees or volunteers from any county sheriff's office or other local law enforcement authority of the county in the state where such employee or volunteer has resided and, in addition, if different from the county of residence, the county in which such person also worked or volunteered, for the twelve (12) month period immediately prior to the start of employment or volunteer service in the adult day care center.
 - (iii) The abuse registry operated by the Tennessee Department of Health pursuant to *TCA §§68-11-1001 et seq.* shall also be contacted by the center to obtain any available information relative to the employee/volunteer's background.
 - (iv) The information required by this part may be obtained through use of a public or private entity which will secure the criminal background records check from the appropriate law enforcement authorities and which will check the Tennessee Department of Health registry, in the manner described above.
 - (v) Evidence of the background check contained in the records shall include, at a minimum, the recording of a signed statement by the director or other staff person of the center, or the provision by an entity described in subpart (iv) of a letter to the adult day care center, verifying the names of law enforcement officials or agencies contacted and the dates such agencies and the abuse registry were contacted by the center or by the entity utilized by the center, and the results of the inquiry;
3. Documentation in the employee's or volunteer's record of efforts to obtain the criminal background check and to contact the abuse registry;
4. Educational background;
5. Employment history and references;
6. Annual performance evaluation;
7. Evidence of the absence of tuberculosis if the staff person or volunteer:
 - (i) is an immigrant to this country within the last twelve (12) months;
 - (ii) is known to be human immunodeficiency virus (HIV) positive;
 - (iii) has been recently exposed to tuberculosis; or
 - (iv) has had a cough for three (3) weeks or longer, in which case the person should be evaluated by a physician for tuberculosis prior to employment or use as a volunteer.
8. A person to be notified in case of an emergency involving the employee or volunteer.

(Rule 1240-7-10-.10, continued)

- (b) A copy of the center's personnel policies shall be available to be read by employees.
- (3) Training: Staff shall be provided with orientation and on-going training/education to perform their duties. Staff development training shall be provided to all employees on a regular basis for at least eight (8) hours a year. This training may include consultation, workshops, or conferences as well as in-service education provided by the agency. Training must include education to enable staff to recognize the signs and symptoms of abuse, neglect or exploitation of an adult within the meaning of *TCA §71-6-101 et seq.*, as well as the duty to report abuse, neglect or exploitation of an adult to the Department pursuant to *TCA § 71-6-103*.
- (4) Qualifications.
 - (a) The adult day care center director shall meet one (1) of the following requirements:
 - 1. A minimum of a bachelor's degree in social services, health, and/or related fields and one (1) year of experience working in social services, health, and/or related fields; or a minimum of a bachelor's or master's degree (not related to social services, health, or related fields), but two (2) years work experience in social services, health and/or related fields;
 - 2. Sixty (60) semester hours (formal college training) in social services, health, and/or related fields and two (2) years of work experience;
 - 3. A minimum of a master's degree in health, social services, and/or related fields; or
 - 4. A high school diploma or its equivalent, and five (5) years of full time work experience (in a managerial capacity) in social services, health and/or related fields.
 - 5. Persons serving in the capacity of director of a facility which meets the requirements for licensing as an adult day care center on the effective date of these rules shall be deemed to meet the qualifications of this paragraph.
 - 6. In an adult day care center located on the premises of, and operated by a sponsoring facility consisting of either a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or licensed residential hospice, the licensed facility's administrator may designate a professional staff member to directly and routinely supervise the adult day care center's operations if this person meets the qualifications of parts 1.-5. of this subparagraph and paragraph (4). The person appointed by the facility administrator will be considered to be the full-time director of the adult day care center by the Department, and this person will be held responsible for the center's functions and activities. For purposes of this part, it shall be deemed that the sponsoring facility administrator is the director of the licensed sponsoring facility, and that the director of the adult day care center is under the supervision of the sponsoring facility's administrator.
 - (b) All persons included in the staff:participant ratio shall be able to read and write English.
 - (c) A minimum of seventy-five percent (75%) of persons included in the staff:participant ratio shall have a high school diploma or GED.
 - (d) Age requirements; exceptions.
 - 1. All employees and volunteers shall be at least eighteen (18) years of age.

(Rule 1240-7-10-.10, continued)

2. An exception to the minimum age requirement shall be made if the person is a student under eighteen (18) years of age, and enrollment in a Vocational Education Program, Job Training or other health career development program which is included in the curriculum of an accredited high school is verified, and these students may be employed, or serve as volunteers, but only on a part time or temporary basis. These students may be counted in the participant/staff ratio if they otherwise meet the minimum qualifications for regular staff persons who perform the functions or activity being provided. However, they must be under the supervision of a full-time staff member at all times.
 3. Further, other students enrolled in high school who are ages fourteen (14) through seventeen (17) years of age may provide companionship services for the participants or may provide office or administrative services to the center, but they shall not be counted in the participant/staff ratio. No students under eighteen (18) years of age shall be in positions of supervision of staff or other volunteers, and under no circumstances will they be left alone in an adult day care center without at least one staff member, eighteen (18) years of age or older, being present.
- (5) **Persons Charged with or Convicted of Certain Criminal Activity.** No employee or volunteer or any other person who is currently charged with or who has been convicted of a crime involving the misuse of funds, fraud, physical abuse or assault of any degree, or any degree of homicide against any person, or the illegal use or possession or distribution of drugs or alcohol, shall work with or have access to the participants at the adult day care center.
- (6) **Persons Determined to Have Abused, Neglected or Exploited an Adult.** No employee or volunteer or any other person shall work with, or have access to, the participants at the adult day care center who is the subject of a restraining order or other injunctive relief entered by any court of competent jurisdiction following an investigation by either the Department of Human Services, or by a state or local agency with similar responsibilities in any other jurisdiction, and a finding by such agency that the employee, volunteer or other person had abused, neglected or exploited an adult within the meaning of TCA §§71-6-101 *et seq.*, or a similar statute of such other jurisdiction.

Authority: T.C.A. §§4-5-201 *et seq.*; 71-2-401 *et seq.* **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.11 RELEASE OF INFORMATION.

The licensee and center staff must not disclose or knowingly permit the use of any information concerning a participant or the participant's family except as required by law or regulation, or with the permission of the participant's responsible party; provided, however, the director and any staff shall provide any information to law enforcement or adult protective service staff of the Department investigating any allegations of abuse, neglect or exploitation of any participant and shall allow access to all records of the center or the participant for the purpose of the investigations of such allegations or for purposes of conducting any licensing functions.

Authority: T.C.A. §§4-5-201 *et seq.*; 71-2-401 *et seq.* **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.12 MEDICATION ADMINISTRATION.

- (1) The center must have a written policy which allows a participant to self-medicate or which allows staff to provide assistance to the participant for this purpose.
- (2) Administration of Medication.

(Rule 1240-7-10-.12, continued)

- (a) Self-administration of medication permits staff assistance to participants for reading labels, opening bottles, reminding participants of their medication, checking the self-administered dose against the dosage shown on the prescription, observing the participant while taking medication, reassuring participants that they are taking the correct dosage and reporting any noticeable changes in the condition of a participant to a physician and to the responsible party.
 - (b) Under no circumstances shall an employee or volunteer administer prescribed and non-prescribed, internal and external medication to a participant unless the employee is licensed to do so.
- (3) List of current prescriptions and non-prescription medicines being taken by a participant must be maintained by the center staff and medications or drugs which are to taken by the participant must be labeled with the participant's name, the name of the medication, dosage strength and frequency.
- (4) The center shall maintain records of medications taken by the participant, including the date, dosage taken and time the medication was taken by the participant.
- (5) All medication errors, drug reactions, or suspected over-medication must be reported to the physician who prescribed the drug and to the participant's responsible party.
- (6) Discontinued and outdated drugs and containers with worn, illegible or missing labels must be returned to the responsible party or disposed of properly.
- (7) An adult day care center located on the premises of and operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice shall be deemed to meet the requirements of this rule if, for its adult day care participants, it utilizes the same system for medication recordkeeping as is used for its other patients/clients/residents; provided, however, the records kept for the adult day care center participants must be placed in individual files separate from the files of the other patients/clients/residents of the facility and shall include the information in 1240-7-10-.12(4).

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.13 TRANSPORTATION.

- (1) The vehicle used either by the adult day care center, or the vehicle used under the sponsorship or control of the center, which is used for transportation of the participants, must be covered by vehicle liability insurance.
- (2) Drivers of the vehicles used to transport participants must have a proper license and endorsement required for the transportation of the number of passengers transported and the vehicle size and weight as required in *Title 55, Chapter 50 of the Tennessee Code Annotated*. The adult day care center shall have this information available for purposes of review and documentation by the Department's staff.
- (3) Vehicles used to transport participants shall be maintained in safe working condition.
- (4) Management Responsibility, Required Verification of Adult's Transportation Status and Transportation Training Requirements.
 - (a) Management Responsibility.
 - 1. If an adult day care center provides transportation, or if transportation is provided under its direction or control either by sponsorship or by contract with other transportation

(Rule 1240-7-10-.13, continued)

providers, the center's management shall be fully responsible for the transportation of adults between the adult's home (or place of dwelling) and the center; to and from other locations; and on field trips.

2. The adult day care center is responsible for developing a transportation plan which ensures the safety of participants. However, the procedures in subparagraph (b) will be required as minimal requirements to be included in this plan.

(b) Verification Procedures.

1. Immediately upon unloading the last participant from the vehicle and at the time the vehicle is parked and will be left unattended at the center, or on a field trip or some other location away from the center, the driver, or other staff person, shall ensure that all the participants being transported have been unloaded.
2. The driver, or other staff person shall physically walk through the vehicle to check all seats and all interior spaces of the vehicle. The time of the physical inspection shall be recorded and turned in to a staff member at the center each day.

(c) Vehicle Occupancy.

1. Participants may be left in the vehicle, for a brief period of time, while the driver assists a disabled or impaired participant to enter his home, enter a doctor's office, or other similar circumstance. However, the driver will only be away from the vehicle long enough to assist the participant to his destination and the driver will promptly return to the vehicle. Participants will not be left unattended in the vehicle over five (5) minutes. Also, during these times when the driver is outside the vehicle, for purposes of assisting another participant, or for official transportation related reasons, the driver will not be more than a distance of five hundred (500) feet away from the vehicle.
2. The driver will only leave the vehicle to assist participants, for emergency reasons, or for purposes related to the transportation and safety of the vehicle's occupants. The driver will not be permitted to leave the vehicle for personal reasons, such as carrying out personal errands, buying personal items, taking coffee breaks, or other matters which are not related to the transportation of participants.

(d) Staff training.

1. All staff responsible for transporting adults shall receive adequate training regarding the transportation rules contained in this Chapter, as well as any other agency procedures which are not in conflict with these rules, prior to first performing those duties.
 2. All staff responsible for transportation shall receive such training no less than every six (6) months thereafter.
 3. Completion of such training shall be documented in the staff's records.
- (5) The participant shall not be on a vehicle operated by the center or under the center's direction or control or through contract provided transportation for more than one and one-half hours without the opportunity for a rest stop.
- (6) All facility owned vehicles used to transport participants must have an operational fire extinguisher and first aid kit on the vehicle.

(Rule 1240-7-10-.13, continued)

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.14 SAFETY REQUIREMENTS.

- (1) The adult day care center must have a written emergency plan and have a posted plan for evacuation of participants, staff, and visitors in case of fire or other emergencies such as storms, flooding, and chemical emergencies.
- (2) Telephone numbers for the following must be posted:
 - (a) Ambulance service;
 - (b) Police department;
 - (c) Fire department;
 - (d) Poison control center; and
 - (e) The Tennessee Department of Human Services, Adult Protective Services.
- (3) Fire Safety Requirements.
 - (a) Initial Approval. Unless otherwise governed by currently adopted regulations of the Tennessee Department of Health's regulations for health care facilities, all reviews for and approvals of state building and fire codes and for new and existing adult day care facilities will be conducted initially, prior to licensing, under the jurisdiction of the State Fire Marshal or a representative of the State Fire Prevention Division, and these reviews and approvals shall be completed pursuant to the requirements of TCA §68-120-101. The reviews and approvals for adult day care centers shall use the same standards as are utilized by the State Fire Marshal for providers of child care in child care centers licensed by the Department of Human Services. Each licensee shall comply at all times with the applicable fire safety and building codes as directed by local and state fire inspection officials.
 - (b) If a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice which operates or has an adult day care center on its premises provides evidence that the "adult day care center" area of the facility has been inspected and approved for fire safety standards by the Tennessee Department of Health's Division of Health Care Facilities, this evidence will satisfy the requirements of this paragraph. If such evidence is not provided, proof of an approved inspection by an appropriate fire inspection official must be received by the Department of Human Services. The director of the adult day care program will be responsible for providing proof of this inspection.
 - (c) All adult day care centers licensed by the Department must receive an approved fire safety inspection by an appropriate fire inspection official prior to re-licensing, or must receive annual approval as a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice by the Tennessee Department of Health's Division of Health Care Facilities. If evidence of approval by the Department of Health is not provided, proof of an approved fire safety inspection by an appropriate fire inspection official must be received by the Department of Human Services. The adult day care center director is responsible for supplying documentation of compliance.
- (4) Environmental Safety Requirements.

(Rule 1240-7-10-.14, continued)

- (a) Initial Approval. Facilities that have been unlicensed, relocated, and/or renovated, as well as new construction, must be inspected and approved initially by an environmentalist from the Tennessee Department of Health. The major categories included in this inspection are: water supply; sewage disposal; plumbing; solid waste; toilets and bathing fixtures; floors, walls and ceilings; doors and windows; furniture and bedding; lighting, heating, and ventilation; insect and rodent control; (animal control where appropriate) and over-all building safety. Although portions of this inspection overlap with food service inspection and fire inspection, this is a separate inspection and shall not be considered as a substitute for those other inspections.
 - (b) If a licensed nursing home, a licensed hospital, a licensed assisted living facility, a licensed home for the aged or a licensed residential hospice which operates or has an adult day care center on its premises provides evidence that the "adult day care center" area of the facility has been inspected and approved for environmental standards by the Tennessee Department of Health's Division of Health Care Facilities, this evidence will satisfy the requirements of this paragraph. If such evidence is not provided, proof of an approved inspection by an environmentalist of the local health department must be received by the Department of Human Services. The director of the adult day care program will be responsible for providing proof of this inspection.
 - (c) Annual Inspection. All facilities must be inspected and approved annually by an environmentalist of the Tennessee Department of Health or must receive annual approval as a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or licensed residential hospice by the Tennessee Department of Health's Division of Health Care Facilities. If such evidence is not provided, proof of an approved inspection by an environmentalist of the local health department must be received by the Department of Human Services. The adult day care center director is responsible for supplying documentation of compliance.
- (5) If, during the course of an inspection of a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice by staff of the Tennessee Department of Health, any deficiencies are identified which relate to the facility's adult day care program, the adult day care center director representing the facility will be responsible for ensuring that the Tennessee Department of Human Services is promptly notified of the deficiency.
 - (6) Staff are required to report cases of suspected abuse, neglect, and exploitation of an adult participant to the Tennessee Department of Human Services' local office according to *Tennessee Code Annotated §71-6-103*. Failure to do so shall, by itself, constitute a basis for denial or revocation of the license.

Authority: T.C.A. §§4-5-201 et seq.; 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.

1240-7-10-.15 LICENSING VIOLATIONS/DUE PROCESS.

- (1) Notice of Violation of Standards and Corrective Action.
 - (a) If the Department finds violations of these rules or the law governing its operation which may lead to denial of a renewal of a license or suspension or revocation of an existing adult day care center license, the Department shall give written notice of the violations by certified mail, return receipt requested to the licensee or other person(s) who may reasonably appear to be in charge of the operation of the adult day care center and may, in addition to mail notice, give other written and/or oral notice of such violations personally to the licensee or other person(s) who may reasonably appear to be in charge of the operation of the adult day care center.

(Rule 1240-7-10-.15, continued)

- (b) The notice shall give the factual basis for the rules violations and shall cite to the specific rules which are being violated.
 - (c) If, in the judgment of the Department, no emergency conditions exist, the Department shall describe what must be done by the center to effect compliance with the rules in this Chapter and any law governing the center's operations and shall give the licensee a reasonable opportunity to demonstrate compliance with all licensing rules and laws affecting the center's operations before initiating any adverse action.
- (2) Probation and Procedures for Appeal of Probationary Status.
 - (a) Notice.
 - 1. If the Department determines that an adult day care center is not in compliance with the regulations established by this Chapter or the law governing its operation, and after reasonable written notice and an opportunity to effect compliance as provided by paragraph (1), the Department may place the center on probation.
 - 2. Prior to placing the center on probation, the Department shall provide written notice by personal delivery by a duly authorized representative of the Department, or by certified mail, return receipt requested, regarding the legal and factual basis for its proposed action and shall offer the center the opportunity to appeal the proposed action.
 - (b) The center may appeal the intended probation action in writing to the Commissioner within ten (10) days of receipt of the notice. If timely appealed, the Department will schedule an informal hearing concerning the proposed action. The hearing shall be held by the Commissioner or a designated hearing officer within thirty (30) days of the date the appeal request is received unless continued for good cause shown or unless an extension is agreed to by the licensee in writing. The Commissioner or designated hearing officer shall make a decision within ten (10) days of the hearing. The decision of the Commissioner or designated hearing officer shall be final for this initial probationary status.
 - (c) If a center is placed on probation by the Department, the center shall post a copy of this notice in a conspicuous place, as directed by the Department. The center shall notify the responsible parties for each of the adults in its care in writing regarding the center's status and the basis for the probation.
 - (d) If the center corrects the violation after being placed on probation, the Department shall immediately remove the probationary status and the center will not be further required to post any notice of the probation and may notify relatives and other responsible parties of the adults in its care of the termination of the probation status.
 - (e) If the Department determines that a violation remains uncorrected after the center has been placed on probationary status and the center has had the opportunity to appeal the initial placement on probation, the Department shall notify the center of its determination as provided in paragraph (1)(a) above. The center may appeal this determination to the Commissioner within the time periods provided in paragraph (2)(b), above. The hearing shall be held by the Commissioner or designated hearing officer within thirty (30) days of the date the appeal request is received unless continued for good cause shown or unless an extension is agreed to by the licensee in writing. The Commissioner or designated hearing officer shall make a decision within ten (10) days of the hearing. If the decision upon appeal is that the center should remain on probation, the center may then file a petition for judicial review of the decision of the Commissioner or designated hearing officer, as provided pursuant to *TCA §4-5-322*, in the chancery court of the county where the center is located.

(Rule 1240-7-10-.15, continued)

- (f) The Department shall maintain records of the hearings under subparagraphs (b) and (e) above, which shall become the record for the judicial review of the administrative decision regarding probation.
 - (g) The decision to place a center on probation shall be discretionary with the Department and shall not be a prerequisite to any licensing action to summarily suspend, to revoke or to deny any license.
 - (3) Denial of an Application for a License and Appeal.
 - (a) Appeal Procedure.
 - 1. The applicant for a provisional license, or for renewal of a license, which has been denied for failure to meet the regulations in this Chapter and the law governing its operation, shall be immediately notified by the Department in writing by certified mail, return receipt requested. The notice of denial shall include the factual and legal basis for the denial.
 - 2. The applicant seeking to appeal the Department's action must submit a written request for a hearing to the Commissioner within ten (10) days of the mailing date of the notice.
 - 3. Upon timely receipt of the request by the Commissioner, a hearing shall be set by the Department within sixty (60) days of receipt of the request. The hearing on the appeal shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, *TCA §§4-5-301 et seq.* If a timely request for a hearing is made, the existing license, if any, shall continue in effect, unless suspended or revoked, until the resolution of the administrative appeal.
 - (4) Revocation of a License and Appeal.
 - (a) If, during the term of any license, the Department determines that the license should be revoked because of a failure to correct any noted violation of the regulations established by this Chapter or the law governing the center's operation, the Department shall immediately notify the licensee in writing, by certified mail, return receipt requested, of the legal and factual basis for these violations and of the Department's intent to revoke the license within sixty (60) days.
 - (b) Appeal Procedure.
 - 1. The licensee must submit a written request for a hearing to the Commissioner within ten (10) days of the mailing date of the notice.
 - 2. Upon timely receipt by the Commissioner of the request, a hearing shall be set by the Department within sixty (60) days of receipt of the request. The hearing on the appeal shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, *TCA §§4-5-301 et seq.* If a timely request for an appeal is made, the existing license shall continue in effect, unless suspended, until the resolution of the administrative appeal.
 - (5) Summary Suspension of a License and Appeal.
 - (a) A license may be summarily suspended by the Department pursuant to the provisions of *TCA § 4-5-320* if the Commissioner, or the Commissioner's designee, finds that the public health, safety or welfare imperatively requires emergency action, and incorporates such finding in the

(Rule 1240-7-10-.15, continued)

summary suspension order. The order shall be effective upon receipt by the licensee or the person having responsibility or reasonably believed to have responsibility over the operations of the adult day care center, and the center shall cease operations immediately, or as otherwise directed by the order. The summary suspension order may be personally delivered immediately by a duly authorized representative of the Department and shall also be sent by certified mail, return receipt requested.

- (b) The order shall notify the licensee of the legal and factual basis for the summary suspension and what action is necessary to immediately effect compliance with the regulations and shall notify the licensee of the time, date and place of the hearing in subparagraph (c) to contest the summary suspension order and of the right to be represented by legal counsel at the licensee's expense.
- (c) The order shall be reviewed within five (5) business days of the suspension order, excluding Saturdays, Sundays and legal holidays, by a hearing officer appointed by the Commissioner. The hearing and entering of the order shall proceed as follows:
 - 1. The hearing shall be informal and shall not be conducted pursuant to the contested case proceedings under *Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated*. It shall be conducted by a hearing officer from the Department's Administrative Procedures Division who shall not have had any involvement in the decision to suspend the license. The sole issue before the hearing officer shall be whether the public safety, health or welfare imperatively require emergency action by the Department due to the failure of the center to comply with any law or regulation relating to the center's operations.
 - 2. The Department shall be required to present evidence to the hearing officer which supports the basis for the summary suspension order and its continuance. The licensee shall then have an opportunity for response.
 - 3. The hearing officer shall make a written determination of whether probable cause exists for continuance of the suspension order based upon the standard set forth in Part 1.
 - 4. The order containing the hearing officer's findings and ruling shall be entered within five (5) business days of the date of the hearing and shall be served upon the licensee and upon legal counsel for the licensee by certified mail, return receipt requested or by personal delivery, and by mail or personal delivery upon the Department's adult day care licensing staff and legal counsel for the Department. If the summary suspension order is upheld on review, the licensee shall no longer be eligible for any payments from the Child and Adult Care Food Program (CACFP) unless the suspension or any resulting revocation or denial of the license is subsequently overruled by the Department upon administrative review or by other order of the Commissioner, or by a reviewing court.
- (d) No period for compliance following a suspension order shall exceed thirty (30) days without lifting the suspension or without written notice by the Department of intent to revoke or deny the license, except with the written consent of the licensee.
- (e) Notice of Denial and Revocation Following Suspension.
 - 1. If compliance is not effected within the thirty (30) day period from the entry of the suspension order, or unless the suspension is lifted, or unless the licensee has agreed to an extension of the suspension order in writing, the Department shall, for purposes of subparagraph (d) give written notice, as required by paragraph (3)(a), of its intent to deny the licensee's pending application for renewal of the license, or shall give notice to the licensee, as required in paragraph (4)(a), of its intent to revoke the license. Notice shall

(Rule 1240-7-10-.15, continued)

be sent by certified mail, return receipt requested and, for purposes of this subparagraph and subparagraph (d), is effective upon the mailing date of the notice.

2. The licensee may appeal such revocation or denial as stated in paragraphs (3) and (4), and the summary suspension order shall remain in effect unless lifted or modified by the procedures under subparagraph (c). If less than sixty (60) days remain before the expiration of the license at the time of the suspension, and compliance is not effected as required by the Department, the Department may revoke the license as provided above upon sixty (60) days written notice to the licensee, and all provisions of the rules relating to revocation of licenses shall apply.
- (6) Unless the license has been or is suspended as provided in paragraph (5), the existing license shall remain in effect during the proceedings to revoke or deny the license until the last day to seek appeal of the Department's decision or, if appealed, until the final order of the Department, or until a later date fixed by a reviewing court. Provided, however, the Department shall continue to have the right of inspection of the adult day care center during the pendency of the administrative hearing or the reviewing Court's proceedings, and may bring new or additional violations for consideration by the hearing official by amendment of its original notice which shall be filed with the hearing official and sent to the licensee by certified mail, return receipt requested.
- (7) The hearing regarding a denial or revocation of the license may, by order of the hearing official, be continued up to a period of six (6) months, and permit the licensee to continue operations under whatever conditions are appropriate, if the hearing official determines, and makes such finding in the order, that such continuance is necessary to further determine the licensee's ability or willingness to adhere to these regulations. No continuances shall be permitted, for this purpose, for more than six (6) months. The hearing official may receive further evidence concerning the licensee's compliance with the regulations. The hearing official shall then only determine whether the denial or revocation should be sustained on the previously charged violations or any new violations found by the Department of which the licensee has received written notice since the previous notice of denial or revocation.
- (8) When, except for the provisions for its continuation pursuant to paragraphs (6) or (7), a license would have expired during the proceeding before the hearing official or the reviewing court, and when the Department's final order or the reviewing court does not ultimately sustain the Department's denial or revocation of the license, the licensee must apply for a new license within ten (10) calendar days of the date of the Department's final order or the reviewing court's order. If a new, timely application is made, the previously issued license shall remain in effect, unless suspended, until a determination of the application by the Department and until any timely appeal of such determination is taken as described above.
- (9) No license shall remain in effect following a final order of the Department upholding the Department's action regarding the suspension, denial or revocation of a license unless a stay is entered by the Department or by the reviewing court.
- (10) A licensee may not reapply for a license for a period of sixty (60) days following a denial, suspension, or revocation of a license which has not been appealed, or for the same period following entry of a final order of the Department or a final order of a reviewing court if the action of the Department has been sustained.

Authority: T.C.A. §§4-5-201 et seq.; 4-5-301 et seq.; 4-5-320; and 71-2-401 et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000.